

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

VITOLI MOURZAKHANOV,

Plaintiff,

NOTICE OF MOTION

-against-

Civil Action No.: 07 CV 6205(LAK)

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS and
BLACK AND DECKER (U.S.) INC.,

Defendants.

-----X

TO:

John E. Durst, Jr.
THE DURST LAW FIRM, P.C.
Attorneys for Plaintiff
319 Broadway
New York, New York 10007
(212) 964-1000

PLEASE TAKE NOTICE, that upon the annexed affidavit of Arnold I. Katz sworn to on the 7th day of March, 2008, the exhibits attached thereto, the Memorandum of Law in Support of Motion to Preclude, and all prior pleadings and proceedings heretofore had herein, defendant, Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Co., DeWalt Construction Tools and Black & Decker (U.S.) Inc., will move this court, before Honorable Lewis A. Kaplan at the United States District Court for the Southern District of New York, 500 Pearl Street, New York, New York 10007, on a date to be assigned, for an order precluding Plaintiff from introducing


expert testimony at the time of trial, together with such other and further relief as to the court may seem just and proper.

Dated: New York, New York
March 7, 2008

Yours, etc.,

CALINOFF & KATZ LLP

BY:


Arnold I. Katz (AIK-2146)

Attorneys for Defendant

BLACK & DECKER (U.S.) INC. s/h/a
DEWALT INDUSTRIAL TOOL CO.
DEWALT CONSTRUCTION TOOLS
and BLACK AND DECKER (U.S.) INC.
140 East 45th Street
17th Floor
New York, New York 10017
(212) 826-8800

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VITOLI MOURZAKHANOV,

Plaintiff,

AFFIDAVIT IN SUPPORT

-against-

Civil Action No.: 07 CV 6205(LAK)

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS and
BLACK AND DECKER (U.S.) INC.,

Defendants.

-----X

STATE OF NEW YORK)

:ss

COUNTY OF NEW YORK)

ARNOLD I. KATZ, an attorney at law duly admitted to practice before the courts of New York State, as well as this Court, being duly sworn deposes and says:

1. I am a member of the law firm of Calinoff & Katz LLP, attorneys for defendant, Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Co., DeWalt Construction Tools and Black & Decker (U.S.) Inc. (hereinafter "Black & Decker"). As such I am fully familiar with all the facts, circumstances and proceedings hereinbefore had herein.

2. I make this affidavit in support of defendant, Black & Decker's motion for an order precluding Plaintiff from introducing expert testimony at the time of trial, together with such other and further relief as to the Court may seem just and proper.

3. This is a product liability, strict liability and personal injury action regarding a power saw allegedly manufactured by Black & Decker. The action was commenced by Plaintiff on June 13, 2007, in the Supreme Court of the State of New York, Bronx County. Defendant DeWalt removed the action to this court on July 3, 2007. (See Exhibit A)

4. On October 2, 2007, this Court initially ordered Plaintiff's expert disclosure to be served no later than January 15, 2008. (See Exhibit B)

5. On January 3, 2008, this Court extended expert disclosure, ordering Plaintiff's expert disclosure to be served no later than February 15, 2008, and Defendants' expert disclosures to be served no later than February 28, 2008." (See Exhibit C)

6. On February 12, 2008, counsel for Plaintiff wrote to the Court requesting a 30 day extension to serve his expert disclosure from February 15, 2008 to March 15, 2008. (See Exhibit D)

7. While Plaintiff's application was pending before Your Honor, Plaintiff's disclosure deadline passed, and he failed to produce any expert disclosure. To date, Plaintiff has not specified any defect.

8. By endorsed memo dated February 21, 2008 and filed February 22, 2008, the Court denied Plaintiff's application for an extension to file his expert disclosure. (See Exhibit E).

9. By necessity, Defendants served their expert disclosure on February 27, 2008, in accordance with the order. Since Defendants had not received Plaintiff's expert disclosure, Defendants were still unaware of the specific defect claim brought by Plaintiff. Accordingly, Defendants expert disclosure could not address any particular defect claim. Defendants' expert disclosure was directed at causation, in that the Plaintiff's testimony regarding the happening of the accident is in conflict with the physical characteristics of the accident scene.

10. As a result, Defendants are moving to preclude Plaintiff from offering any expert testimony at trial due to Plaintiff's discovery default.

11. As discussed in detail in the accompanying memorandum of law, preclusion is automatic. Additionally, the Second Circuit for the Court of Appeals has applied four factors to assist a court in determining whether preclusion is warranted. As demonstrated in the memorandum of law, this Court is warranted under each of the four factors.

WHEREFORE, it is respectfully requested that this Court grant an order precluding Plaintiff from offering expert testimony at the time of trial.

Yours, etc.,

CALINOFF & KATZ LLP

BY: 

Arnold I. Katz (AIK-2146)

Attorneys for Defendant

BLACK & DECKER (U.S.) INC. s/h/a
DEWALT INDUSTRIAL TOOL CO.
DEWALT CONSTRUCTION TOOLS
and BLACK AND DECKER (U.S.) INC.
140 East 45th Street
17th Floor
New York, New York 10017
(212) 826-8800

Sworn to before me this
7th day of March, 2008


Notary Public

CLAUDIA BLANCHARD
Notary Public, State of New York
No. 01BL6160575
Qualified in Queens County
Commission Expires Feb. 12, 20 11

TO:

John E. Durst, Jr.
THE DURST LAW FIRM, P.C.
Attorneys for Plaintiff
319 Broadway
New York, New York 10007
(212) 964-1000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VITOLI MOURZAKHANOV,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS and
BLACK AND DECKER (U.S.) INC.,

Defendants.
-----X

NOTICE OF REMOVAL

Civil Action No.:

Bronx County Supreme Court
Index No.: 16278-07

PLEASE TAKE NOTICE THAT, defendant, Black & Decker (U.S.) Inc. (hereinafter "Black & Decker"), for itself and those entities incorrectly sued herein as DeWalt Industrial Tool Co. and DeWalt Construction Tools, through their attorneys, Calinoff & Katz LLP, hereby give notice of the removal of the above captioned action from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York and state as follows:

Grounds of removal

1. This Court has original jurisdiction of this action under 28 U.S.C. §1332, and this action is therefore removable under 28 U.S.C. §1441 and §1446, in that as set forth further below, it is a civil action where the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, and is between citizens of different states.

EXHIBIT A

State Proceedings

2. Plaintiffs commenced this action in the Supreme Court of the State of New York for the County of Bronx under the caption Vitoli Mourzakhanov vs. DeWalt Industrial Tool Co., DeWalt Construction Tools, and Black and Decker (U.S.) Inc., with an Index No. 16278/07.

3. Upon information and belief, the plaintiff filed a summons and complaint with the Supreme Court of the State of New York, County of Bronx on June 13, 2007. (See annexed Exhibit "A").

4. Defendants Black & Decker were served via the Secretary of State on June 22, 2007, (See Affidavit of Service annexed hereto as Exhibit "B").

Nature of this Action

5. The complaint alleges causes of action sounding in negligence, products liability, strict liability, with regard to a power saw, allegedly manufactured by Black & Decker.

Timeliness of Removal

6. This notice of removal was timely filed within thirty (30) days of receipt of the initial pleading setting forth plaintiff's claims for relief. Specifically, defendants Black & Decker were served via the Secretary of State on June 22, 2007. Accordingly, the instant notice of removal has been filed within thirty (30) days of receipt of the initial pleading, indicating that this Court had jurisdiction.

Diversity of Citizenship

7. Plaintiff, is, and at all relevant times, has been a citizen of the State of New York, residing, upon information and belief in Kings County.

8. DeWalt Industrial Tool Co. is not a legal entity entitled to sue or be sued but rather a trade name used by defendant Black & Decker (U.S.) Inc. a Maryland corporation, with its principal place of business at 701 East Joppa Road, Towson, Maryland 21286.

9. DeWalt Construction Tools is not a legal entity entitled to sue or be sued but rather a trade name used by defendant Black & Decker (U.S.) Inc., a Maryland corporation, with its principal place of business at 701 East Joppa Road, Towson, Maryland 21286.

10. Black & Decker (U.S.) Inc. is a Maryland corporation, with its principal place of business at 701 East Joppa Road, Towson, Maryland 21286.

11. The alleged accident that is the basis of plaintiffs' complaint is alleged to have occurred at 1225 Morrison Avenue, Bronx, New York 10471.

Amount in Controversy

12. The plaintiff demands the sum of \$5,000,000.00, exclusive of interests and costs. Hence, because the parties are diverse and the amount in controversy exceeds \$75,000.00, this action is within the federal court's diversity jurisdiction.

Consent

13. Since the Black & Decker defendants have been the only defendants served in this action, there are no other defendants to grant consent. Thus, obtaining consent in this action is not applicable.


WHEREFORE, Black & Decker respectfully requests that this civil action be removed from the Supreme Court of the State of New York, County of Bronx, to the United States District Court for the Southern District of New York, and henceforth, that this action be placed on the docket of this Court for further proceedings, the same as though this action had originally instituted in this Court.

Dated: New York, New York
July 3, 2007

Yours, etc.,

CALINOFF & KATZ LLP

BY:


Robert A. Calinoff
Attorneys for Defendants
DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS
and BLACK & DECKER (U.S.) INC.
140 East 45th Street
17th Floor
New York, New York 10017
(212) 826-8800

TO:

John E. Durst, Jr.
THE DURST LAW FIRM, P.C.
Attorneys for Plaintiff
319 Broadway
New York, New York 10007
(212) 964-1000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
VITOLI MOURZAKHANOV,

SUMMONS

Index #: 16278-07

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS, and
BLACK AND DECKER (U.S.) INC.,

AC

Defendants.

-----X
DEWALT INDUSTRIAL TOOL CO.
1646 Sulphur Spring Road
Baltimore, Maryland 21227
c/o C T Corporation System
111 Eighth Avenue
New York, New York 10011

DEWALT CONSTRUCTION TOOLS
1646 Sulphur Spring Road
Baltimore, Maryland 21227
c/o C T Corporation System
111 Eighth Avenue
New York, New York 10011

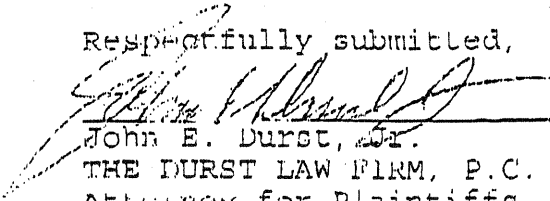
BLACK AND DECKER (U.S.) INC.
701 East Joppa Road, TW286
Towson, Maryland 21286
c/o C T Corporation System
111 Eighth Avenue
New York, New York 10011

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' attorney within 30 days after the service of this summons, exclusive of the date of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 7, 2007

Respectfully submitted,


John E. Durst, Jr.
THE DURST LAW FIRM, P.C.
Attorney for Plaintiffs
319 Broadway
New York, New York 10007
(212) 964-1000

2007 JUN 13 PM 1:23
CLERK OF COURT
CLERK OF COURT

RECEIVED

**Service of Process
Transmittal**

06/22/2007

Log Number 512339797

TO: GARY C DUVALL
Miles & Stockbridge
1 West Pennsylvania Avenue, Suite 900
Towson, MD, 21204

RE: Process Served in New York

FOR: Black & Decker (U.S.) Inc. (Domestic State: MD)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Vitoli Mourzakhanov, Pltf. vs. Dewalt Industrial Tool Co., et al. including Black and Decker (U.S.) Inc., Dfts.

DOCUMENT(S) SERVED: Summons, Verified Complaint, Verification

COURT/AGENCY: Bronx County: Supreme Court, NY
Case # 16278-07

NATURE OF ACTION: Product Liability Litigation - Manufacturing Defect - Dewalt power saw - Personal injuries - On 9/29/05 - Seeking \$10,000,000.00

ON WHOM PROCESS WAS SERVED: C T Corporation System, New York, NY

DATE AND HOUR OF SERVICE: By Process Server on 06/22/2007 at 14:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): John E. Durst, Jr.
The Durst Law Firm, P.C.
318 Broadway
New York, NY, 10007
(212) 964-1000

ACTION ITEMS: SOP Papers with Transmittal, via Fed Ex 2 Day, 790768285751
Email Notification, Slobhan Millor Slobhan.Miller@bdk.com

SIGNED: C T Corporation System
PER: Christopher Tilton
ADDRESS: 111 Eighth Avenue
New York, NY, 10011
TELEPHONE: 212-894-8940

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
VITOLI MOURZAKHANOV,

SUMMONS

Index #: 16278-07

Plaintiff

AC

- against -

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS, and
BLACK AND DECKER (U.S.) INC.,

Defendants.

-----X
DEWALT INDUSTRIAL TOOL CO.
1646 Sulphur Spring Road
Baltimore, Maryland 21227
c/o C T Corporation System
111 Eighth Avenue
New York, New York 10011

DEWALT CONSTRUCTION TOOLS
1646 Sulphur Spring Road
Baltimore, Maryland 21227
c/o C T Corporation System
111 Eighth Avenue
New York, New York 10011

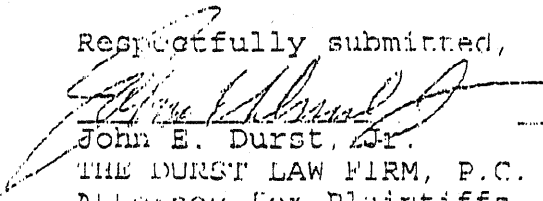
BLACK AND DECKER (U.S.) INC.
701 East Joppa Road, TW266
Towson, Maryland 21286
C/o C T Corporation System
111 Eighth Avenue
New York, New York 10011

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' attorney within 30 days after the service of this summons, exclusive of the date of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: June 7, 2007

Respectfully submitted,


John E. Durst, Jr.

THE DURST LAW FIRM, P.C.
Attorney for Plaintiffs
319 Broadway
New York, New York 10007
(212) 964-1000

RECEIVED
JUN 13 PM 1:23

RECEIVED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
VITOLI MOURZAKHANOV,

Plaintiff,

VERIFIED COMPLAINT

INDEX # 16278/07

against -

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS and
BLACK AND DECKER (U.S.) INC.

Defendants.
-----X

Plaintiff, by THE DURST LAW FIRM, P.C., alleges the
following upon information and belief:

A FIRST CAUSE OF ACTION
FOR NEGLIGENCE

1. At all times hereinafter mentioned, the plaintiff was a resident of Brooklyn, New York.
2. At all times hereinafter mentioned, the defendant DEWALT INDUSTRIAL TOOL CO. was a domestic corporation, incorporated under the laws of the State of New York.
3. At all times hereinafter mentioned, the defendant DEWALT INDUSTRIAL TOOL CO. was authorized to do business in the State of New York.
4. At all times hereinafter mentioned, the defendant DEWALT CONSTRUCTION TOOLS was a domestic corporation, incorporated under the laws of the State of New York.

5. At all times hereinafter mentioned, the defendant DEWALT CONSTRUCTION TOOLS was authorized to do business in the State of New York.

1. At all times hereinafter mentioned, the defendant BLACK AND DECKER (U.S.) INC. was a domestic corporation, incorporated under the laws of the State of New York.

2. At all times hereinafter mentioned, the defendant BLACK AND DECKER (U.S.) INC. was authorized to do business in the State of New York.

3. On or about 9/29/05, the plaintiff VITOLI MOURZAKHANOV, was injured at 1225 Morrison Avenue, Bronx, NY 10471.

4. The plaintiff was injured as a result of the defective and dangerous condition of a DEWALT power saw.

5. Said product was designed by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

6. Said product was manufactured by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

7. Said product was installed by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

8. Said product was sold by the defendant DEWALT INDUSTRIAL TOOL CO., at a date prior to the accident, to another.

9. Said product was maintained and/or repaired by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

10. Said product was modified and/or altered by the defendant DEWALT INDUSTRIAL TOOL CO. at a date prior to the accident.

11. Said product was designed by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

12. Said product was manufactured by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

13. Said product was installed by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

14. Said product was sold by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident, to another.

15. Said product was maintained and/or repaired by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

16. Said product was modified and/or altered by the defendant DEWALT CONSTRUCTION TOOLS at a date prior to the accident.

17. Said product was designed by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

18. Said product was manufactured by the defendant BLACK AND DECKER (U.S.) INC., at a date prior to the accident.

19. Said product was installed by the defendant BLACK AND DECKER (U.S.) INC. , at a date prior to the accident.

20. Said product was sold by the defendant BLACK AND DECKER (U.S.) INC. , at a date prior to the accident, to another.

21. Said product was maintained and/or repaired by the defendant BLACK AND DECKER (U.S.) INC. , at a date prior to the accident.

22. Said product was modified and/or altered by the defendant BLACK AND DECKER (U.S.) INC. , at a date prior to the accident.

23. Said product was negligently and carelessly designed.

24. Said product was negligently and carelessly manufactured.

25. Said product was negligently and carelessly installed.

26. Said product was negligently and carelessly sold.

27. Said product was negligently and carelessly maintained and repaired.

28. Said product was negligently and carelessly modified and altered.

29. Said product contained defects and dangers.

30. The defendants knew or should have known that said product was in a defective, dangerous condition.

31. The defendants failed to disclose knowledge of the defective and dangerous condition of the product to others to whom a duty was owed to do so.

32. As a result of the aforesaid condition of said product, the plaintiff VITOIT MOURZAKHANOV, suffered a serious and permanent injury.

33. As a result of the foregoing, the plaintiff has suffered compensatory and exemplary damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

**A SECOND CAUSE OF ACTION
FOR STRICT PRODUCTS LIABILITY**

34. Plaintiff repeats and reiterates each paragraph of the First Cause of Action, as if fully stated herein.

35. As a result of the foregoing, the defendant is liable to the plaintiff VITOIT MOURZAKHANOV, under the doctrine of strict products liability, for defective design, manufacturing, and warnings.

36. As a result of the foregoing, the plaintiff has suffered compensatory and exemplary damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00).

WHEREFORE, the Plaintiff VITOLI MOURZAKHIANOV, demands compensatory and exemplary damages in the First Cause of Action in the amount of FIVE MILLION DOLLARS (\$5,000,000.00), and in the Second Cause of Action in the amount of FIVE MILLION DOLLARS (\$5,000,000.00); together with the costs of this action.

THE DURST LAW FIRM, P.C.
Attorneys for plaintiff
319 Broadway
New York, New York 10007
(212) 964-1000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

VITOLI MOURZAKHIANOV,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS, and
BLACK AND DECKER (U.S.) INC.,

Defendants.

X

ATTORNEY VERIFICATION

Index #:

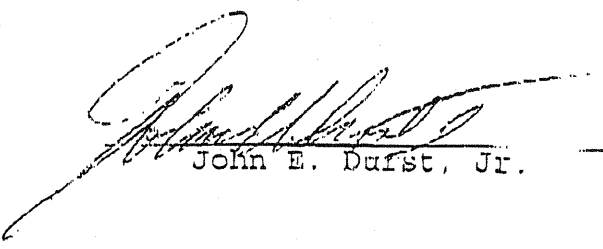
16278/07

X

John E. Durst, Jr., an attorney admitted to practice in the State of New York, hereby affirms pursuant to CPLR 2106:

I am a shareholder in THE DURST LAW FIRM, P.C., attorneys of record for the Plaintiff. I have read the annexed Verified Complaint, know the contents thereof, and the same are true to my knowledge, except those matters which are stated to be alleged on information and belief, and as to those matters I believe them to be true. Such belief is based upon review of the file, consultation with the plaintiff, and investigation. The reason I make this affirmation instead of the plaintiff is that the plaintiff resides in a county other than the county in which their attorneys has their office.

Dated: New York, New York
June 7, 2007


John E. Durst, Jr.

**Service of Process
Transmittal**

06/22/2007

Log Number 512339779

TO: GARY C DUVAL
Miles & Stockbridge
1 West Pennsylvania Avenue, Suite 900
Towson, MD, 21204

RE: Process Served in New York

FOR: DeWalt Industrial Tool Co. (Assumed Name) (Domestic State: MD)
Black & Decker (U.S.) Inc. (True Name)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Vitoli Mourzakhanov, Pltf. vs. Dewalt Industrial Tool Co., et al., Dfts.
DOCUMENT(S) SERVED:	Summons, Verified Complaint, Verification
COURT/AGENCY:	Bronx County, Supreme Court, NY Case # 16278-07
NATURE OF ACTION:	Product Liability Litigation - Manufacturing Defect - Dewalt power saw - Personal injuries - On 9/29/05 - Seeking \$10,000,000.00
ON WHOM PROCESS WAS SERVED:	C T Corporation System, New York, NY
DATE AND HOUR OF SERVICE:	By Process Server on 06/22/2007 at 14:00
APPEARANCE OR ANSWER DUE:	Within 30 days after the service, exclusive of the day of service
ATTORNEY(S) / SENDER(S):	John E. Durst, Jr. The Durst Law Firm, P.C. 319 Broadway New York, NY, 10007 (212) 964-1000
ACTION ITEMS:	SOP Papers with Transmittal, via Fed Ex 2 Day, 790768285751 Email Notification, Siobhan Miller Siobhan.Miller@bdk.com
SIGNED:	C T Corporation System
PER:	Christopher Tilton
ADDRESS:	111 Eighth Avenue New York, NY, 10011
TELEPHONE:	212-894-8940

Page 1 of 1/EB

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided in the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of the package only, not of its contents.

Robert Calinoff

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: October 02, 2007 03:23 PM
To: deadmail@nysd.uscourts.gov
Subject: Activity in Case 1:07-cv-06205-LAK Mourzakhanov v. Dewalt Industrial Tool Co. et al Scheduling Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.

U.S. District Court**United States District Court for the Southern District of New York****Notice of Electronic Filing**

The following transaction was entered on 10/2/2007 at 3:22 PM EDT and filed on 10/2/2007

Case Name: Mourzakhanov v. Dewalt Industrial Tool Co. et al

Case Number: 1:07-cv-6205

Filer:

Document Number: 8

Docket Text:

CONSENT SCHEDULING ORDER: Amended Pleadings due by 10/30/2007., Joinder of Parties due by 10/30/2007. Deposition due by 3/1/2008. Discovery due by 3/1/2008. Joint Pretrial Order due by 4/1/2008. Rule 26(a)(2) disclosures - expert witnesses by 1/15/08; rebuttal expert witnesses by 2/1/08. (Signed by Judge Lewis A. Kaplan on 10/2/07) (db)

1:07-cv-6205 Notice has been electronically mailed to:

Robert A. Calinoff rcalinoff@candklaw.com

1:07-cv-6205 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=10/2/2007] [FileNumber=3859722-0]
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Robert Calinoff

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: January 03, 2008 03:43 PM
To: deadmail@nysd.uscourts.gov
Subject: Activity in Case 1:07-cv-06205-LAK Mourzakhanov v. Dewalt Industrial Tool Co. et al Stipulation and Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

U.S. District Court

United States District Court for the Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 1/3/2008 at 3:43 PM EST and filed on 1/3/2008

Case Name: Mourzakhanov v. Dewalt Industrial Tool Co. et al

Case Number: 1:07-cv-6205

Filer:

Document Number: 10

Docket Text:

STIPULATION: All deposition to be completed by 4/1/08. Discovery cut off by 4/1/08.
Plaintiff's expert disclosure pursuant to Rule 26(a)(2) to be served no later than 2/15/08.
Defendant's expert disclosure pursuant to Rule 26(a)(2) to be served no later than 2/28/08.
Joint Pretrial Order shall be filed on or before 5/1/08. (Signed by Judge Lewis A. Kaplan on 1/3/08) (tro)

1:07-cv-6205 Notice has been electronically mailed to:

Robert A. Calinoff rcalinoff@candklaw.com

1:07-cv-6205 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=1/3/2008] [FileNumber=4130749-0]
[903d200b63f97c36b8a1c34de17d1feb536b67a03e553fdfb36b0f5b8e97286a7cb5
cd8b439fd9c2a50b8f0b5cb1d207bd23d1b09c10f2845092ee9659e3f396]]

EXHIBIT C

2/25/2008

THE DURST LAW FIRM, P.C.

John E. Durst, Jr. *
Of Counsel
Moses Apsan **
Andrew Berman *
Jeffrey Galperin *
Jaghab, Jaghab & Jaghab

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February 12, 2008

Hon. Lewis A. Kaplan
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Request to amend Case Management Order
Mourzakhanov v. DeWalt, 07-cv-06205 (LAK)

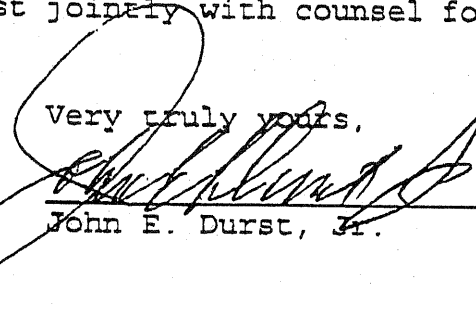
Dear Judge Kaplan:

In this products liability case, we aspired to an abbreviated discovery schedule, but despite good faith efforts of all parties, the depositions were just completed today, and important information agreed to be provided during the depositions is being searched for.

Expert disclosure is scheduled for exchange February 15, 2008. Rather than provide incomplete expert reports, it is respectfully requested that the Case Management Order be modified by extending the deadlines for 30 days. Attached is a proposed amended Case Management Order.

I am making this request jointly with counsel for the defendant.

Very truly yours,


John E. Durst, Jr.

Cc: Robert Calinoff, Esq.
Counsel for Defendant

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VITALI MOURZAKHANOV,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS and
BLACK AND DECKER (U.S.) INC

Defendants.
-----X

STIPULATION

07 CV 6205 (LAK)

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/22/08

IT IS HEREBY STIPULATED BY AND BETWEEN the attorneys
for the parties in the above-captioned matter that the Consent
Scheduling Order signed by Honorable Lewis A. Kaplan on December
21, 2007 be amended as follows:

1. All depositions to be completed by May 1, 2008;
2. Discovery cutoff by June 1, 2008;
3. Plaintiff's expert disclosure pursuant to Rule 26 (a) (2) to be served no later than March 15, 2008;
4. Defendants' expert disclosure pursuant to Rule 26(a) (2) to be served no later than April 15, 2008;
5. Joint Pretrial Order in the form prescribed in Judge Kaplan's Individual Rules shall be filed on or before June 1, 2008.

Dated: New York, New York

MEMO ENDORSED
in the absence of
any reason for an
extension, application
denied
SO ORDERED
KAPLAN, USDS
2/27/08

STATE OF NEW YORK)
:SS
COUNTY OF NEW YORK)

Sergellys Martinez, being duly sworn, deposes and says:

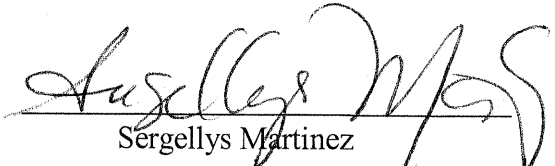
Deponent is not a party to the action, is over 18 years of age and resides in Bronx, New York;

On March 7, 2008, deponent served the within NOTICE OF MOTION TO PRECLUDE


upon:

John E. Durst, Jr.
The Durst Law Firm, P.C.
Attorneys for Plaintiff
319 Broadway
New York, New York 10007

by depositing a true copy of same enclosed in a post paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Sergellys Martinez

Sworn to before me this
7th day of March, 2008


Notary Public

CLAUDIA BLANCHARD
Notary Public, State of New York
No. 01BL6160575
Qualified in Queens County
Commission Expires Feb. 12, 20 11